

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
**Public Health Service**  
**Indian Health Service**

Ref: BHP

ALBUQUERQUE AREA INDIAN HEALTH SERVICE CIRCULAR NO. 2002-01

COURT REQUESTS FOR INDIAN HEALTH SERVICE  
BEHAVIORAL HEALTH STAFF FUNCTIONS

Sec.

1. Purpose
  2. Background
  3. References
  4. Definitions
  5. Policy
  6. Responsibilities
  7. Procedures
  8. Effective Date
- Exhibits

1. PURPOSE. The purpose of this circular is to establish a policy for the Albuquerque Area Indian Health Service (AAIHS) regarding Court Requests for IHS Behavioral Health functions. This policy will comply with the confidentiality of such records in accordance with the Privacy Act of 1974, 5 U.S.C.552b., "Limited Applicability To Federal Courts". This circular has limited applicability to orders issued by federal masters and judges for the performance of behavioral health services discussed in this circular, because federal courts have original jurisdiction over federal agencies. In the event an order is received from a federal master or judge, please contact the Office of General Council (OGC) Regional Counsel.
2. BACKGROUND. The IHS Behavioral Health staff provides an array of treatment services to promote the health and well being of American Indian/Alaska Native (AI/AN). In some instances, courts are challenged with the responsibility to resolve legal issues related to social and family discord in their respective communities. Since courts have limited resources to assess social, family, and individual dynamics, courts request clinical expertise in assessment and recommendations. IHS and AAIHS policies do not address court requests for home study/assessments in custody evaluations, adoptions, protective orders or requests for other forms of clinical reports. These requests often create conflicts of interest for the behavioral health staff and/or impede the delivery of clinical services. This policy is intended to clarify the scope and limitations of the IHS Behavioral Health staff functions upon receipt of court requests.

3. REFERENCES. Indian Health Manual (IHM); IHM Chapter 14, Mental Health Programs; Chapter 8, Social Work Service; 45 CFR Parts 2, 5; Department of the Interior, Bureau of Indian Affairs, 25 CFR Part 20; IHS, Taos/Picuris Indian Health Center, Behavioral Health Manual; State of New Mexico, Chapter 32, Children's Code; USDHHS, "Role of Mental Health Professional in the Prevention of Child Abuse/Neglect," 1993.

4. DEFINITIONS.

Legal Custody. A legal status created by the order of the Children's Court or the Tribal Court that vest in the person or an agency the right to determine where and with whom a child shall live. Legal custody also gives that person or agency the right and duty to protect the child, provide him/her with food, shelter, education and medical care and make other decisions that affect his/her welfare.

Legal custody continues until terminated by the appropriate authority. A parent has a legal right to the custody of his child unless appropriate authority has terminated that right, however temporarily.

Protective Services. Services that is necessary to protect an individual who is the victim of an alleged and/or substantiated incident of abuse, neglect or exploitation. In coordination with law enforcement, tribal courts, and other protection agencies, they may include an individual's placement outside the home to assure his/her safety while the allegations are being investigated and appropriate interventions are developed and implemented.

Home Study. A social service assessment that includes a home visit to assess the family's history, dynamics, present abilities and resources to provide the necessary care, guidance and supervision for individuals within the family's current living situation who may need protection and/or other behavioral health services.

Court of Law. A court that hears and decides cases on the basis of statutes or common law. Courts of law include federal, state, and tribal courts.

Tribal Court. A court established and operated under the code or custom of a Tribe or any other sanctioned agent of a Tribe that has authority over civil and misdemeanor offenses.

Psychological Evaluations. Licensed psychologists perform psychological evaluations, which are typically comprised of a battery of tests that evaluate cognitive, adaptive, and

pathological functioning. Additional clinical information is collected through interviews and other collateral sources.

Psychosocial Assessment. An assessment performed by a Master's level behavioral health provider based on a thorough interview with the client. The psychosocial assessment may include a mental status examination with personal, family, educational, legal, and occupational history. It usually concludes with a full DSM IV-R diagnosis, clinical impressions, and treatment considerations with recommendations.

Behavioral Health. A combination of several disciplines practiced by individuals with varying professional orientations, education and training, who have met the requirements for licensure and clinical practice. Applied modalities include case management, counseling, social work, psychology, psychiatry, and substance abuse services.

5. POLICY. It is the policy of AAIHS to be consistent with all IHS rules and regulations especially those related to patient care and legal requirements. This policy shall describe the functions and responsibilities of the behavioral health staff when tribal courts request their services.
6. RESPONSIBILITIES. It shall be the responsibility of all AAIHS behavioral health staff to ensure compliance with the policy and procedures established in this circular.
7. PROCEDURE.
  - a. Child Custody Evaluations
    1. Child custody is considered a legal issue between the court and the parents/guardians. An evaluation requested in this context is not within the IHS behavioral health staff scope of services, which is clinical in nature.
    2. Behavioral health staff may assist in locating appropriate resources to conduct child custody evaluations.
  - b. Adoption
    1. In compliance with the IHS Social Services Manual on adoptions the behavioral health staff may provide the following:
      - a. Educational information on the Indian Child Welfare Act.
      - b. Coordination of referral to the appropriate tribal, state, or private agency for assessment and adoption process.

c. Protective Services

1. In adherence with IHS Policy and Procedures, the legal responsibility for the provision of protective services rests with the official child/adult protective or law enforcement agency, i.e. tribal social services, federal, or state child/adult protective services.
2. Behavioral health staff will make a documented referral to the appropriate protective service agency to investigate the allegation(s) of abuse/neglect. Although, Behavioral health staff may be members of a local child protection team (CPT), the CPT is not an investigative agents, nor do they have the legal authority to impose sanctions for protective services.

d. Other Clinical Reports

1. Psychological Evaluations

- a) IHS behavioral health staff does not perform psychological evaluations or psychosocial assessments for custody or forensic purposes; however court referred clients may request.
- b) In the event court referred clients' request services, the provider will ascertain the need to perform the requested services independent of the court order. Court referred clients shall receive services similar to any other client, including a psychosocial assessment, recommended treatment or referral for further evaluative services and a summary statement of the evaluation findings with treatment recommendations. The client will sign a release of information for the IHS records.

2. Competency Evaluations

- a) Licensed psychologists or psychiatrists for purposes of disability benefits, guardianship or conservatorship may complete competency evaluations.

3. Court Subpoenas

- a) Subpoenas received by behavioral health staff will be referred immediately to the OGC, Regional Counsel and the Director, Contract Health Services, Albuquerque Area Office for written approval by the Area Director in a timely manner.
- b) Requests for court appearances/testimony initiated by Behavioral Health staff will be referred through the Director, Contract Health Services,

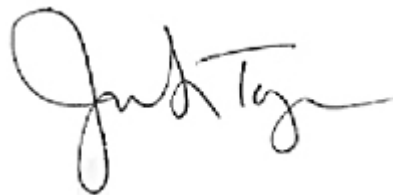
Albuquerque Area Office for written approval by the Area Director.  
(Exhibit 1)

- c) Subpoenas for medical record information will be referred for clearance by the Director, Contract Health Services, Albuquerque Area Office.  
(Exhibit 1)

4. Involuntary Commitment

- a) Cases that involve a danger to self or others, the behavioral health staff may initiate or independently approach the court/judge, outside the context of a hearing or other sworn testimony, for an involuntary commitment. Also the behavioral health staff may assist family members or community officials in carrying out such commitments.
- b) Behavioral health staff must ensure that a physician, psychiatrist, psychologist, or law enforcement that initiates an involuntary commitment to a psychiatric or nursing home facility signs a Certification of Mental Disorder Form. (Exhibit 2)

8. EFFECTIVE DATE. This circular is effective upon date of signature and shall remain in effect until canceled or superseded.

A handwritten signature in black ink, appearing to read "James L. Toya". The signature is fluid and cursive, with the first name "James" being more prominent and the last name "Toya" following in a similar style.

4/15/02

James L. Toya Director  
Albuquerque Area Indian Health Service

## **EXHIBIT I**

DATE: Nov 20, 2000

TO: Chief Executive Officers  
Administrative Officers

FROM: Director, Albuquerque Area Indian Health Service

SUBJECT: Requests for Testimony/Production of Records

The purpose of this memorandum is to apprise you of the procedures governing the provision of testimony and/or the production of medical records and other patient information by Albuquerque Area Indian Health Service (AAIHS) personnel. The policy and procedures are as follows:

### **Requests for Testimony**

An employee of the AAIHS may not provide testimony or produce documents in any proceeding concerning information acquired in the course of performing his/her official duties unless prior approval is obtained from the Area Director. An AAIHS employee receiving a subpoena to testify in litigation in his/her own private capacity shall consider it to be non-official. As such, outside activities are permissible when undertaken on the employee's own time.

Testimony can be defined as:

In person, oral statements before a court, legislative or administrative body and statements made pursuant to depositions, interrogatories, declarations, affidavits or other formal participation.

When an employee receives a request for testimony, he/she shall immediately forward the request to Ms. Maria Clark, whose telephone number is 505-248-4528, and who facsimile is 505-248-4733. The request will then be shared with the Assistant Regional Attorney and presented to me for approval or denial. The employee will then be notified, in writing, as to my decision regarding the testimony.

### **Requests for Medical Records**

Indian Health Service medical records (other than records relating to deceased patients) are subject to the provisions of the Privacy Act, 5 U.S.C., S 552a, and the Department of Health and Human Services Privacy Act regulations, 5 C.F.R. Part 5b. The Privacy Act and the DHHS regulations allow for the disclosure of an individual's record to a third party only if the individual consents or if the disclosure falls within one of twelve exceptions set for in the Act and regulations. Note that additional restrictions on release of information relating to alcohol and drug abuse patients and information in mental health records that may be subject to the psychotherapist-patient privilege.

When an employee receives a request for medical records without the individual's consent, including minors, he/she shall immediately forward the request to Ms. Clark. The request will then be shared with the Assistant Regional Attorney to determine whether the records should be released.

Please ensure that each of your employees is aware of the above procedures governing requests for testimony/records. If you have any questions, please feel free to contact Ms. Clark.

## EXHIBIT 2

### CERTIFICATION OF MENTAL DISORDER

STATE OF NEW MEXICO:

COUNTY OF \_\_\_\_\_:

The undersigned hereby certifies on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I examined

Name: \_\_\_\_\_ D.O.B. \_\_\_\_/\_\_\_\_/\_\_\_\_

And found this person to exhibit a mental disorder such that if not immediately restrained by an involuntary commitment, the aforesaid individual presents a likelihood of serious harm to self or others, as evidenced by:

- a. \_\_\_\_\_  
\_\_\_\_\_
- b. \_\_\_\_\_  
\_\_\_\_\_
- c. \_\_\_\_\_  
\_\_\_\_\_
- d. \_\_\_\_\_  
\_\_\_\_\_

Diagnosis:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

It is recommended, therefore, that \_\_\_\_\_ receive emergency mental health evaluation and care under the provisions of 43-1 NMSA 1989, for a period not to exceed seven (7) days, in \_\_\_\_\_ hospital on the closed psychiatric unit, and in accordance with the provisions of said statute, law enforcement personnel will take the patient into custody and transport to the hospital.

Examiner: \_\_\_\_\_